

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

DAVID J. FALSO,

Defendant.

NOTICE OF MOTION
3:05-CR-270 (TJM/DEP)

No Speedy Trial Exclusions
Apply

PLEASE TAKE NOTICE that, upon the affidavit of Thomas A. Saitta, Esq, sworn to the 3rd day of January, 2006 , the undersigned will move this Court, at a Motion Term thereof, to be held at the Federal Courthouse, Henry Street, Binghamton, New York, on the 27th day of January, 2006, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for the following relief:

1. An Order, pursuant to F.R.C.P. Rule 12(b)(3)(B), dismissing the Indictment, or counts thereof upon the ground that such counts are not legally sustainable; and
2. An Order, pursuant to F.R.C.P. Rule 12(b)(3)(C), suppressing physical evidence upon the ground that such was obtained in violation of the defendant's rights under the Fourth Amendment; and
3. An Order, pursuant to F.R.C.P. Rule 12(b)(3)(C), suppressing statements attributed to the defendant upon the ground that such statements were obtained in violation of the defendant's rights under the Fifth and Sixth Amendments; and
4. An Order determining that a prior conviction may not be used to enhance sentencing pursuant to *Shepard v. United States*, 125 S.Ct. 1254 (2005); and striking language from the Indictment as surplusage pursuant to Rule 7(d) of the Federal Rules

of Criminal Procedure;

together with such other and further relief as to the Court seems just and proper.

Dated: January 3, 2006

"s/Thomas A. Saitta"

Thomas A. Saitta
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Aswad & Ingraham
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